

THIS RULEMAKING: Amend the text of Chapter 305, Section 20, Activities in existing developed areas located in, on or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas. Text in italics is not part of the rule text.

CLEAN COPY (changes incorporated)

Amend Section 20 as follows:

20. Activities located in, on or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas.

A. Applicability

- (1) This section applies to activities in existing developed areas located in, on, or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, and staging areas.
- (2) This section applies to an expansion of up to 10% of an existing development area within a high or moderate value inland waterfowl and wading bird habitat, or a shorebird feeding area, if an individual permit is not otherwise required for activity on the parcel.
- (3) This section applies to activities consisting only of cutting or removal of vegetation within high or moderate value inland waterfowl and wading bird habitat, or shorebird feeding or roosting buffer.
- (4) This section does not apply to an activity that is not or will not be in compliance with the terms and conditions of a permit issued under the *Site Location of Development Law*, 38 M.R.S.A. §§ 481–490, the *Stormwater Management Law*, 38 M.R.S.A. § 420-D, or the *Natural Resources Protection Act*, 38 M.R.S.A. §§ 480-A–480-FF.
- (5) This section does not apply to an activity that does not conform to the local shoreland zoning ordinance.

NOTE: For additional regulatory provisions applicable to significant wildlife habitats, see *Significant Wildlife Habitat*, 06-096 CMR 335 (last amended June 8, 2006).

B. Submissions. The following items must be submitted with the notification, unless otherwise provided below.

- (1) Photographs of the area that will be affected by the activity proposed.
- (2) Photographs showing the completed project and the affected area must be submitted within 20 days of the activity's completion. The photographs must be sent with a copy of the notification form or labeled with the applicant's name and the town in which the activity took place.

- (3) A scaled plan or drawing of the area affected, including information such as the following.
- (a) The entire property on which the activity will take place, including property lines, and the boundaries and location of protected natural resources such as streams, and wetlands, as well as significant wildlife habitat (specify type of significant wildlife habitat).
 - (b) Proposed activity and existing development on which the activity will take place, including buildings, parking areas, roads, fill areas, landscaped areas, etc. If up to a 10% expansion of an existing developed area is proposed within a high or moderate value inland waterfowl and wading bird habitat, or a shorebird feeding area, indicate the existing developed area and proposed expansion.

It is not necessary to have the plan formally prepared. However, it must be legible and drawn to a scale that allows a clear and accurate representation of distances and measurements on the plan.

- (4) For cutting or removal of vegetation in a shorebird roosting area, notice of approval of the activity from the Department of Inland Fisheries and Wildlife (IF&W) must be submitted to the DEP with the notification form. The IF&W approval may specify the location of the activity or other conditions of approval.
- (5) For any work in, on or over a shorebird nesting, feeding, and staging area that would occur between July 15 and September 15, notice of approval of the timing of the activity from the Department of Inland Fisheries and Wildlife must be submitted to the DEP with the notification form.

C. Standards

- (1) For activities in, on or over a shorebird nesting, feeding, and staging area between July 15 and September 15, the activity must occur during the time period approved by the Department of Inland Fisheries and Wildlife.
- (2) The following measures must be taken to prevent erosion of soil or fill material from disturbed areas into the resource:
 - (a) Staked hay bales or silt fence must be properly installed at the edge of disturbed areas between the activity and the undeveloped area before the activity begins;
 - (b) Hay bales or silt fence barriers must be maintained until the disturbed area is permanently stabilized;
 - (c) Within 7 calendar days following the completion of any soil disturbance, and prior to any storm event, mulch must be spread on any exposed soils;
 - (d) All disturbed soils must be permanently stabilized; and
 - (e) Within 30 days of final stabilization of the site, any silt fence must be removed.

NOTE: For guidance on erosion and sedimentation controls, consult the Maine Erosion and Sediment Control BMPs, dated March 2003. This handbook and other references are available from the DEP.

-
- (3) An activity of a type that would qualify for a permit by rule under one of the sections listed below must also meet the requirements of that section.

- Sec. 3. Intake pipes
- Sec. 4. Replacement of structures
- Sec. 6. Movement of rocks or vegetation
- Sec. 7. Outfall pipes
- Sec. 8. Shoreline stabilization
- Sec. 9. Crossings (utility lines, pipes, cables)
- Sec. 10. Stream crossing (bridges, culverts, fords)
- Sec. 11. State transportation facilities
- Sec. 12. Restoration of natural areas
- Sec. 13. Habitat creation or enhancement and water quality improvement activities
- Sec. 15. Public boat ramps
- Sec. 16. Coastal sand dune projects
- Sec. 18. Maintenance dredging renewal permit

- (4) Cutting or removal of vegetation within a high or moderate value inland waterfowl and wading bird habitat, or shorebird roosting buffer, is limited to:

- (a) Removal of a safety hazard; or
- (b) Cutting or removal of vegetation to allow for a footpath not to exceed 6 feet in width as measured between tree trunks and shrub stems. The footpath may not result in a cleared line of sight to the water.

Any cutting or removal of vegetation within a shorebird roosting buffer under this paragraph must be done in consultation with and as approved by the Department of Inland Fisheries and Wildlife.

- (5) Cutting or removal of vegetation within a shorebird feeding buffer must meet the vegetative screening standards set forth in *Mandatory Shoreland Zoning*, 38 M.R.S.A. § 439-A(6). In interpreting and enforcing these standards, the department shall rely upon the department's shoreland zoning rules regarding cutting or removal of vegetation for activities other than timber harvesting¹ and apply the cutting standards applicable within 75 feet of a coastal wetland to the entire 100-foot feeding buffer.

- D. Definitions. The following terms, as used in this chapter, have the following meanings, unless the context indicates otherwise.

- (1) Existing development area. The area of property altered including, but not limited to, buildings, driveways, parking areas, wastewater disposal systems, lawns and other non-native vegetation, as of June 8, 2006. "Existing developed area" has the same meaning as "existing development area".

¹ *Guidelines for Municipal Shoreland Zoning Ordinances*, 06-096 CMR 1000(15)(P) (chapter last amended May 1, 2006).

- (2) Inland high or moderate value waterfowl and wading bird habitat. A high to moderate value inland habitat is an inland wetland complex, and a 250 foot wide zone surrounding the wetland complex, that through a combination of dominant wetland type, wetland diversity, wetland size, wetland type interspersions, and the percent of open water meets IF&W guidelines or is an inland wetland complex that has documented outstanding use by waterfowl or wading birds. See Chapter 335(10)(A) for complete criteria.
- (3) Shorebird nesting, feeding, and staging areas. Shorebird nesting, feeding, and staging areas, and a zone surrounding those areas as described in paragraphs (4) and (5), are significant wildlife habitats. Shorebird species include the members of the families Scolopacidae, Charadriidae, and Haematopodidae, including, but not limited to, sandpipers and plovers. See Chapter 335(11) for complete criteria.
- (4) Shorebird feeding area. A shorebird feeding or staging area that is not a roosting area. The shorebird feeding area includes a 100-foot-wide surrounding buffer referred to as the feeding buffer.
- (5) Shorebird roosting area. A shorebird feeding or staging area that is also a roosting area. The shorebird roosting area includes a 250-foot-wide surrounding buffer referred to as the roosting buffer.

Note: The significant wildlife habitats subject to this section are depicted on GIS data layers maintained by IF&W and available from either IF&W or the DEP.

Amend the effective date text at the end of the chapter as follows:

EFFECTIVE DATE:
February 15, 1989

AMENDED:
March 23, 1991
April 11, 1992
May 19, 1992
May 1, 1995

EFFECTIVE DATE (ELECTRONIC CONVERSION):
May 4, 1996

NON-SUBSTANTIVE CORRECTIONS:
May 12, 1997 - punctuation, formatting, comparison with May 14, 1995 amendment
October 29, 1998 - APA Office Note added to first Section 5

AMENDED:
June 1, 1999

DEPARTMENT OF ENVIRONMENTAL PROTECTION

July 16, 1999 (EMERGENCY, expires October 14, 1999) - Section 10(A)
October 15, 1999 - language reverted to June 1, 1999 version
February 14, 2000 - Section 10

NON-SUBSTANTIVE CORRECTIONS:

November 23, 2000 - removed erroneous April 21, 1995 amendment date

AMENDED:

September 1, 2002

NON-SUBSTANTIVE CORRECTIONS:

September 5, 2002 - title of Section 2 only

AMENDED:

May 25, 2005 – filing 2005-174

AMENDED:

December 5, 2006 -- filing 2006-496

AMENDED (Section 20):